

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Golden Spread Electric Cooperative, Inc.  
Lyntegar Electric Cooperative, Inc.  
Farmers' Electric Cooperative, Inc.  
Lea County Electric Cooperative, Inc.  
Central Valley Electric Cooperative, Inc.  
Roosevelt County Electric Cooperative, Inc.

Docket No. EL05-19-001

v.

Southwestern Public Service Company

ORDER ON MOTION FOR CLARIFICATION

(Issued May 2, 2006)

1. On January 24, 2005, Cap Rock Energy Corporation (Cap Rock) filed a motion for clarification of the order the Commission issued establishing hearing and settlement judge procedures.<sup>1</sup> In this order, the Commission clarifies that Cap Rock is an intervenor, not a party complainant.

2. Cap Rock's initial filing in this case was made on December 2, 2004, when Cap Rock filed a document titled "Motion to Intervene." In the body of that motion to intervene, Cap Rock wrote that it was submitting the motion also as a complaint under section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000), and Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2004). In its order establishing hearing and settlement judge procedures, the Commission stated that "the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding."<sup>2</sup> Later, Cap Rock filed what it characterized as a "motion for clarification," asking the Commission to "clarify" that Cap Rock "has standing . . . as a party complainant . . . ."

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<sup>1</sup> *Golden Spread Elec. Coop., Inc.*, 109 FERC ¶ 61,321 (2004).

<sup>2</sup> *Id.* at P 13.

3. The principal issue presented is whether Cap Rock's December 2, 2004 pleading constituted a complaint. The Commission did not and does not consider Cap Rock's December 2, 2004 pleading to be a complaint.
4. Cap Rock's December 2, 2004 pleading was submitted as a motion to intervene in response to a complaint filed by, *inter alia*, Golden Spread Electric Cooperative, Inc. Although Cap Rock requested in the body of its motion that the motion be considered a complaint, the Commission has long held that a complaint cannot be submitted as a part of a motion to intervene.<sup>3</sup> It not reasonable to expect the Commission to search through the full text of the thousands of motions to intervene filed each year in an attempt to discern language indicating that the filer wishes the intervention to be considered a complaint.
5. Moreover, the facts here weigh against Cap Rock even if the Commission's policy was to the contrary.<sup>4</sup> Complaints filed with the Commission are given a separate docket number and a notice of filing is issued by the Commission and published in the *Federal Register*. This procedure provides all interested persons notice that a complaint has been filed, and provides them an opportunity to respond. Cap Rock captioned its December 2, 2004 pleading as a motion to intervene, included only the docket number assigned to Golden Spread's complaint, and did not indicate in the caption to its filing that it sought the new docket number which would be required for its new complaint. Furthermore, Cap Rock did not in any way include itself in the caption as a complainant, instead listing only the entities who did file a complaint.
6. This order does not foreclose Cap Rock from participating as a party in the instant case or filing its own complaint. This order also does not address whether any relief that may be ordered would, in any event, include relief to Cap Rock.

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<sup>3</sup> See, e.g., *Louisiana Power & Light Co.*, 50 FERC ¶ 61,040 at 61,062-63(1990) (stating that complaints must be titled as such and cannot be included as part of a protest or motion to intervene); see also *Yankee Atomic Elec. Co.*, 60 FERC ¶ 61,316 at 62,096-97 n.19 (1992) (explaining importance of filing complaint separately from motion for clarification); *Entergy Servs., Inc.*, 52 FERC ¶ 61,317 at 62,270 (1990) (stating that complaints must be filed separately from motions to intervene and protests).

<sup>4</sup> *Id.*

The Commission orders:

The Commission hereby clarifies that Cap Rock is an intervenor, not a party complainant.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.